IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 3896 of 2004

Between:

1. Nalla Appa Rao S/o. Nalla Appanna, Sanjay Gandhi Colony Youth Association, Mudasarlova, Visakhapatnam, Visakhapatnam District.
2. P. Appala Reddy, S/o. Parasuram, Sree Veeranjaneya Youth Society, Hanumanthuwaka, Visakhapatnam, Visakhapatnam District.
3. Samanthula Adinarayana S/o. Ramulu, Dr.Ambedkar Youth Society, Hanumanthuwaka, Visakhapatnam, Visakhapatnam District.
4. M. Rambabu S/o. Lakshmi Narayana, Sree Ganesh Youth Society, Ramalayam Street, Visalakshmi Nagar, Visakhapatnam District.

..... PETITIONERS

AND

1. The Government of A.P. rep., by its Secretary, Revenue Department, Secretariat, Hyderabad.
2. The District Collector, Visakhapatnam, Visakhapatnam District.
3. The Mandal Revenue Officer, Visakhapatnam [urban], Visakhapatnam District.
4. The Secretary, VUDA, Visakhapatnam Visakhapatnam District.
5. The Commissioner, Municipal Corporation of Visakhapatnam, Visakhapatnam District.
6. The Hindustan Petrolium Corporation, rep., by its Regional Manager, [Retail]Visakhapatnam Region Office, Opp:Andhra University, Visakhapatnam district.
7. Sri Babu, Proprietor, M/s. Babu Filling Station, HPCL, Retail Outlet, Parvathipuram, Vizianagaram District.
8. The Manager [Technical,] National Highway Authority of India, Visakhapatnam, Visakhapatnam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents 1 to 6 not to permit the 7th respondent herein to shift the retail out let

from the existing place to Sy.No.25 and 27 of Kothavenkoji palem village, Visakhapatnam Mandal [urban], Visakhapatnam District, by declaring the action of the respondents in permitting the 7th respondent to commence the retail outlet for petroleum products in the land being used as burial ground as arbitrary, illegal and unconstitutional.

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for the Respondents 1 to 3: GP FOR REVENUE

Counsel for Respondent No.4: Smt. Sumalini Reddy (SC for VUDA)

Counsel for Respondent No.5: Mr T.S.Venkata Ramana (SC for MCV)

Counsel for Respondent No.6: Mr M. Ravindranath Reddy (SC for HPCL)

Counsel for Respondents 7 & 8: None appeared

The Court made the following:

-

ORDER:

Sixth respondent, Hindustan Petroleum Corporation Limited (for short – HPCL), had on 23.09.2002 applied to the Collector, Visakhapatnam (2nd respondent), for grant of 1500 Sq.yds. of vacant site in Town Survey No.25 of Venkojipalem, abutting NH 5 between Visakhapatnam and Vizianagaram, to establish a retail outlet therein. Second respondent, after ascertaining the views of the Visakhapatnam Urban Development Authority; Commissioner, Municipal Corporation of Visakhapatnam; National Highway Authority of India; and after following the procedure prescribed for leasing out the Government land, addressed a letter to the Chief Commissioner of Land Administration, Hyderabad, who is competent authority to lease out the land, after receiving his approval, agreed to let out Ac.0.21 cents in Sy.No.25/2 and 27/2 of Venkojipalem village, Visakhapatnam Urban Mandal, to HPCL for a period of 25 years on lease in pursuance of G.O.Ms.No.1121 dated 11-11-2003 issued by the 1st respondent (Government of Andhra Pradesh, rep.by the Secretary, Revenue Department) in his proceedings dated 29.12.2003 and directed the Mandal Revenue Officer, Visakhapatnam (Urban), Visakhapatnam District (3rd respondent) to

handover possession of that land to the Senior Regional Manager, HPCL, and collect rent fixed, regularly.

2. Alleging that they are societies registered under the provisions of the Societies Registration Act and that their object is to cater to the needs of the members of their respective societies and to look after the welfare of general public, and that the land in S.Nos.25 and 27 of Kothavenkojipalem village is being used a burial ground from times immemorial, and that members belonging to Yadava, Gowri, Rajaka and other communities bury the dead bodies of their people in that burial ground and had developed a sentimental attachment to that land (as their kith and kin and ancestors were buried there) and that some unknown persons have been taking measurements of that burial ground, and are giving out that the petrol bunk belonging to the

7th respondent is likely to be shifted into that land, petitioners filed this petition to restrain any construction in that land alleging that that land which is classified and is being used as a burial ground and the land into which excess rain and drain water would be received, cannot be permitted to be used for any other purpose as it results in stagnation of rain and drain water and that they came to Court since second respondent is not taking action on their representation that he should not permit any encroachments or constructions in that land.

3. Earlier a learned single Judge, by his order dated 04.03.2004 disposed of this petition, at the stage of admission, with a direction to the second respondent to consider the representation of the petitioners, without fixing any time limit for such disposal. Aggrieved thereby petitioners preferred Writ Appeal No.503 of 2004, which was allowed on 24.03.2004 setting aside the order dated 04.03.2004 of the learned single Judge, with a direction to dispose of the same after considering all the contentions. Thereafter, respondents filed their counters.

4. The case of respondents 1 to 3 is that the land in S.Nos.25 and 27 of Venkojipalem village is classified as Gedda poramboke, and that on an application made by the 6th respondent to lease out an extent of about 1500 Sq.Yds. therein, for setting up a retail outlet abutting the National Highway, second respondent called for a report from the Mandal Revenue Officer about the suitability of the land for

establishment of a petroleum outlet and that the Mandal Revenue Officer, after inspection, found that 1016 Sq.Yds. in S.Nos.25 and 27 of Venkojipalem, adjacent to NH 5, can be leased out to the 6th respondent subject to certain conditions, and that the villages in which the petitioners and their members are residing are far away from Venkojipalem village and that they are not in any way connected with that village, and that the burial ground, referred to by the petitioners, is on the other side of the Vagu (Gedda) and that the land proposed to be let out to the 6th respondent is on the western side of the Gedda and that the contention of the petitioners that the land proposed to be let out is being used as burial ground is incorrect and is misleading.

5. The case of 6th respondent is that on its application for allotment of some extent of land in S.Nos.25 and 27 of Venkojipalem for establishment of a retail outlet, the revenue officials, after following the procedure prescribed and after sub-dividing the land, have agreed to let out about 1000 sq.yds. situated in S.No.25-P and 27-P to it on certain conditions. Before making the sub-division, and sending proposal for allotment of the land on lease to it, revenue officials called for objections, and when no objections were received, views of the Municipal Corporation and other concerned officers were obtained. The contention of the petitioners that establishment of a retail outlet would cause stagnation of rain and drain water is not correct. Since petitioners filed this petition with an evil motto, the same is liable to be dismissed with costs.

6. The contention of the learned counsel for the petitioners is that since the letter in ROC.No.2665/03/A dated 31.01.2003 addressed by the third respondent to the second respondent (copy of which is filed along with the counter affidavit filed on behalf of the 6th respondent), shows that Form A-1 Notice, Check Memo and Proforma 'A' Memorandum were enclosed thereto, and since the letter in RC.No.4519/2002/E1/Dt.17-02-2003 addressed by the second respondent to the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad, a copy of which is produced along with the counter affidavit filed on behalf of the 6th respondent, does not speak anything as to when the Form A-1 notice referred to in the letter of the third respondent was approved and published, it is clear that there

was no due publication of the notice in the locality before considering the proposal for leasing out the land to the 6th respondent, and since admittedly the land in S.Nos.25 and 27 is classified as Vagu (Gedda) poramboke and since construction of a retail outlet therein would cause obstruction to the free flow of rain and drain water and since admittedly a burial ground also is situated therein, establishment of petrol bunk in that land would affect to sentiments of people in that locality and in any event since alienation of burial ground is not permitted, proposal for alienation of the land in S.Nos.25 and 27 to the 6th respondent ought not to have been processed by respondents 1 to 3.

7. The contention of the learned Government Pleader is that proposals for leasing out the land to the 6th respondent, on its application, were processed strictly according to the rules in force, and since there were no objections after publication of the notice and since the burial ground is nowhere near the area of about 1000 Sq.Yds. proposed to be let out to the 6th respondent and is on the other side of the Vagu and since in fact neither petitioners nor its members are residing any where near the said land and since the intention of the petitioners is only to cause inconvenience and loss in revenue to the Government and since Government by letting out the vacant land to the 6th respondent, would be getting a rent of Rs.5,500/- per square yard per month and since nobody would be inconvenienced by leasing out the small extent of land to 6th respondent, petitioners are not entitled to any relief.

8. The contention of the learned standing counsel for

6th respondent is that the documents produced along with the counter affidavit filed on behalf of 6th respondent clearly establish that Visakhapatnam Urban Development Authority, the National Highway Authority and the Municipal Corporation of Visakhapatnam have no objection for leasing out the land of about 1000 Sq.Yds. to the 6th respondent, and since the demarcation sketch prepared by the surveyor clearly shows that the land proposed to be let out to the 6th respondent is abutting the national highway, and is far away from the Vagu (Gedda) and since the burial ground is on the other side of the Vagu, neither petitioners nor any of the

residents of the locality would be inconvenienced in any way and contends that the contention of the petitioners that the land proposed to be let out to the 6th respondent is being used as burial ground would stand belied by the documents prepared by the survey authorities and the Government records and so the petition is but an abuse of process of Court.

9. On my direction, learned Government Pleader produced the file relating to the processing of the application of the 6th respondent. From the file, it is seen that after receipt of the application from the 6th respondent, third respondent submitted his remarks to the second respondent informing him that he inspected land measuring an extent of about 1283 Sq. yds in S.No.25 and 27 and that it is a vacant land and that out of that area 420 Sq. yds. is covered by underground pipeline and that the proposal for leasing out the land to 6th respondent can be considered if it does not cause any damage to the existing underground water pipelines. In his communication dated 18.12.2002, the Revenue Divisional Officer, Visakhapatnam, informed the second respondent that the Executive Engineer,
I & CAD, Visakhapatnam Division, reported that even if a retail outlet is established, there would be no disturbance to the flow of Gedda, or damage to the pipeline under the earth, if proper arrangements are made in respect of the underground pipeline to withstand the wheel load. The Surveyor who surveyed the land proposed to be allotted to the 6th respondent, demarcated the land and prepared sketches and submitted his report by making proposals for sub-division of the land to be let out to the 6th respondent. Commissioner, Municipal Corporation, Visakhapatnam, informed the second respondent that subject to the conditions mentioned by him land proposed to be let out can be let out to the 6th respondent. Mandal Revenue Officer prepared a statement sub-dividing Ac.2.08 cents of S.No.25 which is classified as vagu poramboke as 25/1 describing it as vagu poramboke and 25/2 describing it as let out to 6th respondent, and 25/3 describing it as cause way. He sub-divided S.No.27 whose total extent is Ac.3-82 cents as 27/1 and describing it as Vagu Poramboke, as 27/2 and describing it as let out to 6th respondent, as 27/3 and describing it as cause way; and as 27/4 and describing it as Vagu. It also shows that a notice under

Form ‘A’ was published by the beat of tom tom in the village on 29.01.2003, calling for objections for alienation of 1000 Sq.yds i.e. 330Sq. yds in S.No.25 and 670 Sq. yds in S.No.27 bounded on East by Gedda; West by NH 5 road and land having underground pipeline; North by the remaining extent in the said survey numbers; and South by 40 feet width cause way, by way of lease to the 6th respondent, and that such objections can be submitted within 15 days from the date of publication, and that the said notice was also affixed near the land on 04.02.2003. A Proforma ‘A’ Memo was also prepared on 04.02.2003 along with a Check Memo. So, it is clear that there, in fact, was a publication of the notice proposing alienation of the land to the 6th respondent (on lease) in the locality. Therefore, the contention that there was no notice of proposed alienation (by way of lease) cannot be believed or accepted. The fact that the petitioners contend that they are not aware of the publication of notice, only shows that the contention of respondents 1 to 3 that petitioners are not the residents of that locality, is true. Had they been residing any where near the land proposed to be let out to the 6th respondent, they would not have failed to raise objections in pursuance of the publication of notice by beat of tom tom and by way of affixture at the land.

10. All the above apart, the main ground on which the petitioners came to Court is that the land proposed to be let out is part of the burial ground and so their sentiments and the sentiments of the people of the locality are affected. From the documents filed by the 6th respondent and from the documents produced by the Government Pleader, it is seen that the land in S.Nos.25 and 27 of Venkojipalem is classified as Vagu but not as a burial ground. Petitioners did not produce even a scrap of paper to show that any part of the land in S.Nos.25 and 27 is classified as burial ground, or that the same is being used as a burial ground from times immemorial. But, from the sketch prepared by the surveyor on 20.11.2002 it is seen that some part of the land in S.No.25, which is away from the land proposed to be alienated to the 6th respondent (on lease) is a burial ground. I am inferring it as burial ground due to the ‘+’ marking made therein, though the legend in the sketch does not describe it as a burial ground. Since the area marked ‘+’ in the sketch is far away from the land proposed to be given on lease to the 6th respondent, the contention of the petitioners that their right to bury their dead (if really they have such

right) will be affected is not and cannot be true.

11. The contention that there would be obstruction for the free flow of rain and drain water cannot be accepted because the Executive Engineer in his report did not raise such an objection. Therefore, as rightly contended by the learned counsel for the 6th respondent, it can be taken that the petition is motivated, and is filed only with a view to gain some advantage or to harass the 6th respondent, and so I find no bona fides in the petition.

12. Hence, I find no grounds to interfere with the proposals for leasing out 1000 Sq. Yds. of vacant land in S.Nos.25 and 27 of Venkojipalem village to the 6th respondent subject to the conditions mentioned therein and so the petition is dismissed with exemplary costs of Rs.2000/- (Rupees two thousand only) payable by each of the petitioners to the 6th respondent i.e. each petitioner to pay Rs.2,000/- to 6th respondent.

(C.Y.Somayajulu, J.)

Date:15-03-2005

Cvrk

To

1. The Secretary, Revenue Department, Government of A.P., Secretariat, Hyderabad.
2. The District Collector, Visakhapatnam, Visakhapatnam District.
3. The Mandal Revenue Officer, Visakhapatnam [urban], Visakhapatnam District.
4. The Secretary, VUDA, Visakhapatnam Visakhapatnam District.
5. The Commissioner, Municipal Corporation of Visakhapatnam, Visakhapatnam District.
6. The Regional Manager [Retail], Hindustan Petroleum Corporation, Visakhapatnam Region Office, Opp:Andhra University, Visakhapatnam District.
7. Sri Babu, Proprietor, M/s. Babu Filling Station, HPCL, Retail Outlet, Parvathipuram, Vizianagaram District.
8. The Manager [Technical,] National Highway Authority of India, Visakhapatnam, Visakhapatnam District.
9. 2 copies to The Government Pleader for Revenue, High Court Buildings, Hyderabad (OUT).
10. 2 CD copies.